

# STATE OF NEBRASKA

## DEPARTMENT OF INSURANCE

**L. Tim Wagner**

Director



**Dave Heineman**  
Governor

### INDIVIDUAL REQUIREMENTS TO EFFECT INSURANCE IN NON-ADMITTED COMPANIES (PURSUANT TO NEB.REV.STAT. §44-5501 THROUGH 44-5514)

#### Filing Requirements and Fees

1. Application for individual surplus lines license – The application must be completed in its entirety, signed and notarized.
2. Duration of License and License Fee – Individual surplus lines licenses will be issued for a period of two years on the applicant's birthday when his or her age is divisible by two.

Prior to the start of a two-year license cycle the term of the initial license will be effective the date the appropriate forms and fees are received in the Department and will expire one day prior to the start of a two-year cycle.

When making application for a new license, the following fees must be remitted if the term of the license is:

6 months or less	\$ 50.00
7 to 12 months	125.00
13 to 18 months	175.00
19 to less than 24 months	225.00
Two-Year License	250.00

#### **Example**

Applicant's date of birth is March 12, 1931, and the application and license fee is received in the Department on June 3, 1990, the term of the license would be June 3, 2002, to March 31, 2003, a period of 9 months. The license fee would be \$125.00.

**Section 44-5501*****Act, how cited.***

Sections 44-5501 to 44-5514 shall be known and may be cited as the Surplus Lines Insurance Act.

**Section 44-5502*****Terms, defined.***

For purposes of the Surplus Lines Insurance Act:

- (1) Department shall mean the Department of Insurance;
- (2) Director shall mean the Director of Insurance;
- (3) Insurer shall have the same meaning as in section 44-103; and
- (4) Foreign, alien, admitted, and nonadmitted, when referring to insurers, shall have the same meanings as in section 44-103.

**Section 44-5503*****Surplus lines license; issuance.***

The department, in consideration of the payment of the license fee, may issue a surplus lines license, revocable at any time, to any individual who currently holds an insurance producer license or to a foreign or domestic corporation. The corporate surplus lines license shall list all officers or employees of the corporation who currently hold an insurance producer license or meet the requirements for an individual surplus lines license and who have authority to transact surplus lines business on behalf of the corporation. Only individuals listed on the corporate surplus lines license shall transact surplus lines business on behalf of the corporate licensee. If the applicant is an individual, the application for the license shall include the applicant's social security number.

**Section 44-5504*****Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.***

(1) No person shall place, procure, or effect insurance upon any risk located in this state in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503.

(2) Application for a surplus lines license shall be made to the department on forms designated and furnished by the department and shall be accompanied by a license fee as established by the director not to exceed two hundred fifty dollars for each individual and corporate surplus lines license.

(3)(a) All corporate surplus lines licenses shall expire on April 30 of each year, and all individual surplus lines licenses shall expire on the licensee's birthday in the first year after issuance in which his or her age is divisible by two, and all individual surplus lines licenses may be renewed within the ninety-day period before their expiration dates and all individual surplus lines licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director not to exceed two hundred dollars in addition to the applicable fee otherwise required for renewal of individual surplus lines licenses as established by the director pursuant to subsection (2) of this section. All individual surplus lines licenses renewed within the thirty-day period after their expiration dates pursuant to this subdivision shall be deemed to have been renewed before their expiration dates. The department shall establish procedures for the renewal of surplus lines licenses.

(b) Every licensee shall notify the department within thirty days of any changes in the licensee's residential or business address.

#### **Section 44-5505**

***Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.***

Each surplus lines licensee shall keep in the licensee's office a true and complete record of the business transacted by the licensee showing (1) the exact amount of insurance or limits of exposure, (2) the gross premiums charged therefor, (3) the return premium paid thereon, (4) the rate of premium charged for such insurance, (5) the date of such insurance and terms thereof, (6) the name and address of the nonadmitted insurer writing such insurance, (7) a copy of the declaration page of each policy and a copy of each policy form issued by the licensee, (8) a copy of the written statement described in subdivision (3) of section 44-5510 or, in lieu thereof, a copy of the application containing such written statement, (9) the name and address of the insured, (10) a brief and general description of the risk or exposure insured and where located, (11) documentation showing that the nonadmitted insurer writing such insurance complies with the requirements of section 44-5508, and (12) such other facts and information as the department may direct and require. Such records shall be kept by the licensee in the licensee's office within the state for not less than five years and shall at all times be open and subject to the inspection and examination of the department or its officers. The expense of any examination shall be paid by the licensee.

#### **Section 44-5506**

***Surplus lines licensee; annual statement; tax payment.***

Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall annually, on or before February 15 in each year, make and file with the department a verified statement upon a form prescribed by the department which shall exhibit the true amount of all such business transacted during the year ending on December 31 next preceding the filing thereof. The licensee shall, at the time such statement is filed, pay to the department a tax of three percent on the total gross amount of direct writing premiums received by the licensee on such business and the fire insurance tax prescribed in section 81-523. In no event shall such taxes be

determined on a retaliatory basis pursuant to section 44-150. For purposes of this section, direct writing and premiums shall be as defined in section 77-907.

#### **Section 44-5507**

##### ***Nonadmitted insurer; personal jurisdiction.***

Every nonadmitted insurer transacting business under the Surplus Lines Insurance Act shall be held to have sufficient contact with this state for the exercise of personal jurisdiction over such insurer (1) upon any cause of action arising out of any such transaction or (2) in any proceeding before the director under the act.

#### **Section 44-5508**

##### ***Surplus lines licensee; solvency requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.***

(1) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall ascertain the financial condition of each insurer before such licensee places any insurance with or procures any insurance from such insurer. If requested by the director, the licensee shall provide a copy of the current annual statement certified and sworn to by such insurer.

(2) No surplus lines licensee shall knowingly or without proper investigation place any insurance with or procure any insurance from any nonadmitted foreign or alien insurer that does not have surplus, capital, and reserves in amounts equal to or greater than the requirements of surplus, capital, and reserves placed on admitted insurers which write the same kinds of insurance.

(3) In addition to the requirements of subsection (2) of this section, no surplus lines licensee shall place any insurance with or procure any insurance from any nonadmitted alien insurer unless such insurer (a) maintains in the United States a trust fund in a qualified United States financial institution as defined in subsection (2) of section 44-416.08 in an amount not less than two million five hundred thousand dollars for the protection of policyholders in the United States, consisting of cash in United States currency, readily marketable securities, or clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in subsection (1) of section 44-416.08, and such trust fund shall have an expiration date which at no time shall be less than five years, or (b) is approved by the Nonadmitted Insurers Information Office of the National Association of Insurance Commissioners, and the director, in his or her discretion, has not independently determined such insurer to be in an unsound financial condition.

(4) No surplus lines licensee shall place any insurance with or procure any insurance from any nonadmitted Lloyd's plan or other similar group which includes incorporated and individual unincorporated underwriters unless such group maintains a trust fund of not less than fifty million dollars as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group and such trust complies with the terms and conditions established in subsection (3) of this section for nonadmitted alien insurers.

(5) Any surplus lines licensee violating this section shall be guilty of a Class III misdemeanor.

(6)(a) No nonadmitted foreign or alien insurer shall transact business under the act if it does not comply with the surplus, capital, and reserves requirements of subsection (2) of this section.

(b) In addition to the requirements of subdivision (a) of this subsection, no nonadmitted alien insurer shall transact business under the act if it does not comply with the requirements of subdivision (3)(a) or (b) of this section.

(c) No nonadmitted Lloyd's plan or other similar group which includes incorporated and individual unincorporated underwriters shall transact business under the act if it does not comply with the requirements of subsection (4) of this section.

#### **Section 44-5509**

##### ***Surplus lines licensee; policy; information required.***

A surplus lines licensee shall stamp or type upon the declaration page of each policy procured and delivered under the Surplus Lines Insurance Act the following information:

(1) The licensee's name, business address, and surplus lines license number; (2) the name under which the licensee transacts business if different than the licensee's own name; and (3) the language: This policy is issued by a nonadmitted insurer, and in the event of the insolvency of such insurer, this policy will not be covered by the Nebraska Property and Liability Insurance Guaranty Association.

#### **Section 44-5510**

##### ***Insurance; procurement from nonadmitted insurer; when; terms and conditions.***

If an applicant for insurance is unable to procure such insurance as he or she deems reasonably necessary to insure a risk or exposure from an admitted insurer, such insurance may be procured from a nonadmitted insurer upon the following terms and conditions:

(1) The insurance shall be procured from a surplus lines licensee;

(2) The insurance procured shall not include any insurance described in subdivisions (1) through (4) of section 44-201;

(3) Not later than thirty days after the effective date of such insurance, the insured shall provide, in writing, his or her permission for such insurance to be written in a nonadmitted insurer and his or her acknowledgment that, in the event of the insolvency of such insurer, the policy will not be covered by the Nebraska Property and Liability Insurance Guaranty Association; and

(4) Compliance with section 44-5511.

**Section 44-5511*****Surplus lines licensee; report; contents; when due.***

No later than thirty days after the last day of each calendar quarter, every surplus lines licensee shall file with the department a report containing such information as the department may require, including: (1) The name of the nonadmitted insurer; (2) the name of the licensee; (3) the number of policies issued by each nonadmitted insurer; (4) a sworn statement by the licensee with regard to the coverages described in the quarterly report that, to the best of the licensee's knowledge and belief, the licensee could not reasonably procure such coverages from an admitted insurer; and (5) the premium volume for each nonadmitted insurer by line of business.

**Section 44-5512*****Violations; director; hearing; orders; penalty; appeal.***

(1) Whenever the director has reason to believe that any person has engaged in any activities in violation of the Surplus Lines Insurance Act, he or she may issue an order and notice of hearing directing such person to cease and desist from engaging in such activities. A hearing shall be held within thirty days to determine whether or not such violation occurred.

(2) Such hearing, and any appeal therefrom, shall be in accordance with the Administrative Procedure Act.

(3) If, after such hearing, the director finds that the person charged has committed a violation as alleged, he or she shall reduce his or her findings to writing and serve a copy of the findings on the person charged and, in addition, the director may order any one or more of the following:

(a) That such person cease and desist from engaging in such activities;

(b) Payment of a fine of not more than five thousand dollars; and

(c) Suspension or revocation of any surplus lines license held by such person for such period of time as the director determines.

(4) Any person who violates a cease and desist order may, after notice and hearing and upon order of the director, be subject to:

(a) Payment of a fine of not more than ten thousand dollars; and

(b) Suspension or revocation of each insurance license held by such person for such period of time as the director determines.

(5) For purposes of this section, person shall include a nonadmitted insurer.

**Section 44-5514*****Rules and regulations.***

The director may adopt and promulgate rules and regulations to carry out the Surplus Lines Insurance Act.

**Section 44-416.08*****Qualified United States financial institution, defined.***

(1) For purposes of subdivision (3) of section 44-416.07, qualified United States financial institution means an institution that:

(a) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by either the Director of Insurance or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director.

(2) For purposes of those provisions of sections 44-416.05 to 44-416.10 specifying those institutions that are eligible to act as a fiduciary of a trust, qualified United States financial institution means an institution that:

(a) Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(b) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

## **N-O-T-I-C-E**

This notice and the quarterly and annual reports attached should be read carefully by yourself and anyone within your organization responsible for the preparation of the surplus lines reports. The following subject areas will be covered:

1. Responsibilities of the company and surplus lines licensee when an insurance company actively writing business on a surplus lines basis becomes licensed in Nebraska.
2. Procedure to be followed on “fire” policies when the policy covers perils in addition to strictly fire (i.e. E.C. or all risk).
3. Tax Rate Changes.
4. A revised annual report of business.
5. Quarterly reports.
6. Legal status of fees charged by the licensee in connection with replacement of surplus lines business is classified.
7. “Approval” of surplus lines carriers.

### **Newly Admitted Companies**

The obligations of the surplus lines licensee in regard to premium taxes change completely whenever a previously non-admitted carrier becomes licensed. These changes are as follows:

1. The Surplus lines licensee is not obligate to remit premium taxes for the company to the Department of Insurance for any part of the year in which the company is newly licensed even though he/she may have collected such taxes nor does the agent have this responsibility for premium adjustments in subsequent years.
2. The Surplus lines licensee will receive no credit on surplus lines reports for return premiums in admitted carriers, regardless of whether these returns occur in the year of their admission or later.
3. While the premium tax collected on a surplus lines basis never actually goes through the insurance companies’ books, this tax is considered part of the premium. A newly admitted insurance company processing return premiums is obligated to return proportional amounts of tax collected from an insured by a surplus by a surplus lines agent in the event that return premiums are process after the date of the company’s admission. Likewise, the newly admitted company must pay premium taxes on all amounts collected from insured’s, including surplus lines taxes.



We can only suggest the arrangement between you (the surplus lines licensee) and the carrier should one of your companies become licensed. We would first suggest paying to the company all net surplus lines taxes collected on their behalf. Then, when return premiums are processed after the company's licensing date, company would return both original premiums and proportional surplus lines taxes without attempting to bill the surplus lines agent for the refund of surplus lines taxes. (Note: As always, surplus lines taxes should not be collected by a surplus lines agent when a company is licensed. When this accidentally occurs, the amounts so collected should be returned to the insured.)

### **"Fire" Policies**

Monoline fire policies rarely cover just the peril of fire. Extended coverage is almost always provided and sometimes additional perils or an all risk approach is involved. We have had a significant number of agents who have treated the entire premium from monoline fire policies as fire. During the process of correcting these errors, we have encountered surplus lines writers that do not divide the premium on their monoline fire policies between fire and all other perils. We are, Therefore, establishing the following procedure to be used with monoline fire policies.

1. If an insurance company shows a division of premium between perils, use that division. Do not charge fire marshal tax on the entire premium unless you have encountered one of those rare instances where only the peril of fire is covered. (Note on your quarterly report that the policy covers only the peril of fire or we will question the entry.)

Where a premium breakdown between fire and other perils is not provided on a monoline fire policy that covers also other perils, then use a total tax percentage for the entire Program.

### **Tax Rates**

Below are tax rates that may be used in calculating the premium and fire tax due by line of business. The Department will accept these rates in lieu of calculating the fire portion of each individual policy.

<b>Line of Business</b>	<b>Tax Rate</b>
Portion of fire policies allocated to peril of fire.	3.75%
Premium for perils other than fire contained in monoline fire policies	3.00%
Monoline fire policies where no division between fire and other perils is provided	3.50%
Farmowners Multi-Peril	3.34%
Homeowners Multi-Peril	3.26%
Commercial Multi-Peril	3.30%
Ocean Marine	3.08%
Inland Marine	3.11%
Auto Physical Damage	3.06%
Aircraft Tow	3.08%
Other lines of insurance providing no coverage for the peril of fire	3.00%

### **Annual Surplus Lines Report (DOI\_SL ANNUAL)**

The Nebraska Department of Insurance must receive the report on or before February 15<sup>th</sup> of each year. Pursuant to R.R.S. 45-104.02, an assessment is charged for late payments received. The interest rate is 9% calculated on a 365-day basis for the amount of tax due. Nebraska statutes do not provide for an extension of time in filing the annual report.

A copy of the annual surplus lines report is available on the Nebraska Department of Insurance website. You should make additional copies of this form for your own use, as we do not regularly supply them.

### **Quarterly Report Form (DOI\_SL\_QUARTERLY)**

A copy of the Quarterly Report form is available on the Nebraska Department of Insurance web site. You should make additional copies of this form for your own use, as we do not regularly supply them. The Nebraska Department of Insurance must receive the quarterly report no later than 30 days after the last day of each calendar quarter. The report must be filed, even if no business was written during the quarter.

### **Approval of Surplus Lines Carriers**

We receive numerous requests from non-admitted insurers for Nebraska Department of Insurance approval to write surplus lines in Nebraska. Our response has always been that the Nebraska Department of Insurance issues no approvals of surplus lines carriers, nor is any list of non-admitted insurers maintained. Even so, we regularly notice where some surplus lines carrier professes to be approved to do business on a surplus lines basis in the State of Nebraska. We would caution against initiating business with any insurer with which you are not familiar on the basis of any statement to the effect that a company has been approved as a surplus lines writer in Nebraska.

### **General Information**

1. Nebraska does not approve or disapprove surplus lines carriers. No “white” or “black” list is maintained. It is the responsibility of the licensed surplus lines agent to avoid use of carriers that do not meet Nebraska statutory standards.
2. The surplus lines licensee is responsible for the payment of premium taxes. A listing of premium tax rates currently in use is shown above.
3. Insurance may be placed with a surplus lines carrier only when it cannot be procured through a licensed carrier. It is illegal to place business with a surplus lines carrier because of price.